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Nos. 687, 688, 689

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

**ILLINOIS CENTRAL RAILROAD COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
and MONON RAILROAD,**

Appellants,

v.

**UNITED STATES OF AMERICA
and
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY,
et al.**

Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

MOTION TO AFFIRM

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Appellee, Chicago & Eastern Illinois Railroad Company (C&EI), pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the district court be affirmed on the ground that the questions are so unsubstantial as to not warrant further argument.

STATEMENT

This is a direct appeal from a final judgment and decree dated August 4, 1966, by a district court of three judges specifically constituted pursuant to 28 U.S.C. §§ 2284 and 2325, dismissing appellants' complaint which sought to set

aside certain orders of the Interstate Commerce Commission.

Control of the C&EI is the central issue in this case.

On September 19, 1961, the Missouri Pacific Railroad Company (MoPac) filed an application with the Interstate Commerce Commission in Finance Docket No. 21755 for authority under Section 5(2) of the Interstate Commerce Act to control the C&EI. This application was consolidated with a similar application filed by the Illinois Central Railroad Company (IC) for control of the C&EI (Finance Docket No. 21892), and also an investigation initiated by the Interstate Commerce Commission on its own motion to determine whether the MoPac or the Louisville & Nashville Railroad (L&N) had violated Section 5(4) of the Act by acquiring control of the C&EI without prior authority from the Commission (Finance Docket No. 21980). In addition, the L&N filed a petition with the Interstate Commerce Commission requesting that the successful applicant for control of the C&EI be required to sell the C&EI's Evansville-to-Chicago line to the L&N, or to grant trackage rights on that line to the L&N.

Extensive hearings were held with respect to these applications and petition. Following the hearings, in September 1963, the examiner who heard the case served his recommended report in which he recommended (i) approval of the MoPac's proposed control, (ii) denial of both the IC's proposed control and the L&N's petition for inclusion, and (iii) discontinuance of the investigation proceeding because he found that Section 5(4) of the Act had not been violated by either the MoPac or L&N.

Exceptions to this recommended report were filed and following oral argument before the entire Commission, it issued a report and order on March 8, 1965, granting authority to the MoPac to control the C&EI, denying the IC's

similar application for control, and discontinuing its investigation of the MoPac's purchases of C&EI securities, despite its finding that these purchases had in fact been in violation of Section 5(4) of the Act. The Interstate Commerce Commission also required the MoPac, after it assumed control of the C&EI, to negotiate with the L&N for the sale of the C&EI's Evansville line to the L&N.

Thereafter, the IC filed the instant action in the United States District Court for the Northern District of Illinois, Eastern Division, seeking to have the Commission's orders set aside. The Monon Railroad intervened, as plaintiff, and later the St. Louis Southwestern Railway Company intervened, also attacking the Commission orders. The court below granted a preliminary injunction enjoining the effectiveness of the Commission's orders until the case was fully heard on its merits. After briefs on the merits were filed and oral arguments presented, the court below affirmed the orders of the Interstate Commerce Commission.

ARGUMENT

The decision of the district court is plainly correct.

The underlying Interstate Commerce Commission orders in issue vitally affect the C&EI and its shareholders since the principal questions involved in both the Interstate Commerce Commission orders and in this case, are whether the MoPac or the IC could, through stock ownership, acquire control of the C&EI; whether as a condition of granting approval of control, the C&EI should be obligated to sell its Evansville-Chicago line to the L&N; and whether the MoPac or the L&N had acquired control of the C&EI in violation of law.

The C&EI believes that the Interstate Commerce Commission fully, completely, and fairly considered all the relevant facts involved and rendered a correct decision

based on adequate findings. The district court below, moreover, thoroughly considered the entire record and likewise rendered a correct decision. Although some of the questions raised below and in this Court by the appellants are important, the C&EI believes that these questions were adequately and fully resolved by the district court and, therefore, this Court need not take jurisdiction of the matter.

We respectfully submit, accordingly, that the appellants present no substantial questions for the decision of this Court and that the judgment and decree of the district court should be affirmed.

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